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TO: Ms. Karen Williams
DO/EO/US

703 305 3230

FROM: T. David Reed
International Patent Division*****
Re: PCT/US99/04748; USSN 09/914492; P&G Case CM-2045F

As requested, here is the IPER for this case.

T. David Reed
P&G

MAY 29 2001

PCT/IB/301

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

To:

REED, T, David.
THE PROCTER & GAMBLE COMPANY
5299 Spring Grove Avenue
CINCINNATI, OHIO 45217-1087
ETATS-UNIS D'AMERIQUE

NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL PRELIMINARY
EXAMINATION REPORT
(PCT Rule 71.1)

Date of mailing
(day/month/year) 25.05.2001

Applicant's or agent's file reference
CM2045F/JH

IMPORTANT NOTIFICATION

International application No.
PCT/US99/04748

International filing date (day/month/year)
03/03/1999

Priority date (day/month/year)
03/03/1999

Applicant
THE PROCTER & GAMBLE COMPANY et al.

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.

4. REMINDER

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

Name and mailing address of the IPEA/



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PATENT COOPERATION TREATY


PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference CM2045F/JH		FOR FURTHER ACTION	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)
International application No. PCT/US99/04748	International filing date (day/month/year) 03/03/1999	Priority date (day/month/year) 03/03/1999	
International Patent Classification (IPC) or national classification and IPC A61K7/00			
Applicant THE PROCTER & GAMBLE COMPANY et al.			
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of sheets.</p>			
<p>3. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input checked="" type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input checked="" type="checkbox"/> Certain observations on the international application 			
Date of submission of the demand 07/09/2000		Date of completion of this report 25.05.2001	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 apmu d Fax: +49 89 2399 - 4465		Authorized officer Uhl, M Telephone No. +49 89 2399 8654	



**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/US99/04748

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, pages:

1-25 as originally filed

Claims, No.:

1-17 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)):

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

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(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application.
- ☒ claims Nos. 15-17 as far as industrial application is concerned.

because:

- ☒ the said international application, or the said claims Nos. 15-17 relate to the following subject matter which does not require an international preliminary examination (*specify*):
see separate sheet
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☐ no international search report has been established for the said claims Nos. .
2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:
- ☐ the written form has not been furnished or does not comply with the standard.
- ☐ the computer readable form has not been furnished or does not comply with the standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims 1-17
	No: Claims
Inventive step (IS)	Yes: Claims 1-17
	No: Claims
Industrial applicability (IA)	Yes: Claims 1-14

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EXAMINATION REPORT**International application No. **PCT/US99/04748**

No: Claims

2. Citations and explanations
see separate sheet

VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:
see separate sheet

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

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Re Item III

Claims 15-17 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(i) PCT).

Re Item V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement:

For the assessment of the present claims 15-17 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The formulation of claim 14 is clearly directed to the cosmetic use. This is not the case in the following claims which thus include also the possible medical treatment. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

Novelty (Art. 33 (2) PCT):

A topical composition comprising 0,1-10% of a organic particulate material having a refractive index, of from 1.3 to 1.7 dispersed in the composition and having a volume average particle size from 10-30 μm and 0,05-2,5% of a green platelet type interference pigment having a TiO_2 layer thickness of from 120-160 nm in a dermatologically acceptable carrier is not disclosed in the prior art. Subject matter of claims 1-13 (compositions) and 14-17 (methods) is therefore regarded to be novel over the prior art.

Inventive Step (Art. 33(3) PCT):

Closest prior art is regarded to be US-A-548654 (=D1) which discloses compositions which polymer particles (less than 50 μm) in a dermatologically acceptable carrier and - among others- pearlescent pigments made from TiO_2 and silica.

Difference to the present application: 0,05-2,5% of a green interference pigment based on TiO_2 layers of 120-160nm thickness. Problem was to balance out reddish skin

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

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portions by this nearly invisible green pigment. This problem was solved by the claimed compositions and this solution is not regarded as being obvious for the skilled person. There is no recommendation to balance out reddish skin portions by a interference pigment based on TiO_2 . Thus subject matter of claims is regarded to involve an inventive step.

Re Item VIII

Certain observations on the international application

The term "about" may be regarded as rendering the claims unclear, because the boundaries of ranges could be interpreted as being open in some national or regional patent legislation.